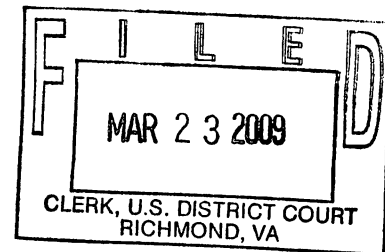


**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**



JERMAINE A. MACK,

Petitioner,

v.

Civil Action No. **3:09CV03**

CHESAPEAKE,

Respondent.

MEMORANDUM OPINION

Petitioner, a Virginia inmate proceeding *pro se*, submitted a 28 U.S.C. § 2254 petition. Prior to seeking federal habeas relief, Petitioner is required to exhaust his available state remedies. *See* 28 U.S.C. § 2254(b)(1)(A). The United States Court of Appeals for the Fourth Circuit has admonished that, “[u]ntil the State has been accorded a fair opportunity by any available procedure to consider the issue and afford a remedy if relief is warranted, federal courts in habeas proceedings by state [inmates] should stay their hand.” *Durkin v. Davis*, 538 F.2d 1037, 1041 (4th Cir. 1976) (internal quotation marks omitted); *see* 28 U.S.C. § 2254(c) (“An applicant shall not be deemed to have exhausted the remedies available in the courts of the State . . . if he has the right under the law of the State to raise, by any available procedure, the question presented.”). Here, Petitioner states that he has not been sentenced. Thus, it appears that Petitioner has an abundance of state court remedies still available. Accordingly, by Memorandum Order entered on February 19, 2008, Petitioner was directed to show cause why the action should not be dismissed without prejudice until he exhausts his available state remedies.

Petitioner responded. Petitioner, however, fails to demonstrate that he should be excused from exhausting his state remedies prior to proceeding with the present action. Accordingly, the action will be DISMISSED WITHOUT PREJUDICE.

An appropriate Order shall issue.

Date: 3-23-09
Richmond, Virginia

/s/
James R. Spencer
Chief United States District Judge